IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 1553 OF 2004

N.B. Sawant,
Aged 47 years, resident of
Datta Prasad Building, Tagore
Nagar, Jilla Peth City,
Jalgaon City 425 001. ... Petitioenr

Vs.

AIR India Ltd.
Old Air Port,
Santacruz (East),
Mumbai. ... Respondent

Petitoner in person.

Mr. S.K. Talsania with Mr. J. Saluka i/by M.V.
Kini & Co. for Respondent.

CORAM : F.I. REBELLO,J.
DATED : DECEMBER 08, 2004

ORAL JUDGMENT :

1. Petition has been filed by the Petitioner in person impugning the award dated 28.11.2003 of the Central Industrial Tribunal. By the said award the tribunal answered the reference by holding that the company has dismissed the workman in accordance with law and under the facts and circumstances, the workman is not entitled to any relief. It is this award which is the subject matter of the present petition.

2. A few facts may be set out.

. The Petitioner initially joined services of the

Respondent No. 1 as a Clerk in Finance and Accounts Department. It is his further case that he was subsequently promoted as Senior Clerk. He has also been promoted thereafter. He was confirmed in the post of Clerk from 1.12.1978. It was his case that he met with an accident on 16.8.1993 while driving his motor cycle. He sought leave of absence by sending letter dated 17.8.1993 under certificate of posting. The fact that he met with an accident was disclosed by him to the office immediately. He was treated for his illness by Dr. S.B. Gupta and other doctors. He reported for work with application dated 20.5.1994 along with medical certificates and all case papers of medical treatment given by Dr. S.B. Gupta, Dr. V.V. Kelkar, Dr. Haria, Dr. P.J. Shah. He was however, directed to undergo medical examination by two expert doctors in the panel of the company by the Chief Medical Officer. They issued medical certificates for him to resume duties. Before he could resume his duty, he was dismissed from service on 21.7.1994. The Petitioner contends that he had given reply to the chargesheet wherein it was alleged that he has remained absent for more than 10 days without permission. The explanation given by him by his letter dated 12.1.1994 was not accepted and an enquiry was ordered. It is his contention that he had not received letter dated 1.3.1994 fixing enquiry on 11.3.1994. The letter

dated 12.3.1994 fixing the enquiry on 24.3.2994 was received by him on 25.3.1994. On 26.3.1994 he wrote a letter to the convener requesting postponement of the enquiry on the ground that he was physically and mentally unwell and also demanded copies of previous letters. He was not supplied with the documents nor was he given reasonable opportunity. The evidence was recorded exparte and the same was in violation of principles of natural justice considering that the workman was unfit to join duty. It was also his allegation that he was not supplied copies of earlier letters and documents referred to in his enquiry. Based on the enquiry report, it is his case, he came to be dismissed from service. The Respondent made an application for approval of the tribunal for the action of dismissal. Approval was granted by the tribunal. He thereafter raised an industrial dispute as there was no settlement. The failure report was submitted by the Conciliation Officer and thereafter reference was made to the Industrial Tribunal. In the submissions filed by him he has reiterated the facts as set out above.

3. On behalf of the Respondent No. 1 company they filed their written statement and set out that the workman remained absent from 17.8.1993. There was correspondence asking him to report. By letter dated 12.1.1994, he was asked to submit himself

before the Medical Clinic of the company. The workman agreed that he would be appearing on 14.1.1994 but asked for further time till 17.1.1994. He did not appear on 17.1.1994. He filed medical certificate that he was advised rest. The chargesheet thereafter came to be served. As the reply filed by the petitioner workman was unsatisfactory, the enquiry committee was constituted. The workman did not participate in the enquiry even though he was given sufficient opportunity of pleading his case and as such the enquiry proceeded exparte. As the workman was found guilty of the charges levelled against him, the competent disciplinary authority concurred with the finding in the enquiry report prima facie and after considering the past record of the workmen issued show cause notice requiring the workman to show cause why the proposed punishment of dismissal should not be imposed. After considering the explanation, the order of dismissal was issued on 27.7.1994. The past record, including past attendance record of the workmen was considered. It was seen from the record taht thrice his increment was withheld and he was issued charge sheet twice in past for habitual late attendance. It was also pointed out that the medical services of the company had informed after detailed laboratory investigations that there existed no medical ground for remaining absent. No

abnormality was found. The allegations made by the Petitioner workman were denied. The allegation that the workman met with motorcycle accident was denied. It was pointed out that the company itself sent its employee to help him. However, these employees who visited him found that the workman was riding his motor cycle. He remained absent and went on sending medical certificates advising rest. The management of the company was ready to provide an ambulance for medical examination by the doctor of the company. The workman declined because he had no intention to submit himself to medical examination and treatment by the doctors of the company. The reasons as to why he did not attend the enquiry is set out.

5. It may be mentioned here that in the ordinary course in the case of industrial reference of dismissal the proper procedure is firstly to decide the preliminary issue whether the enquiry held is fair and proper and in conformity with the model standing orders and the principles of natural justice and fair play and whether the findings are perverse or not. In the instant case, without following that procedure, the workman was allowed to lead evidence. The Management also led evidence. The Tribunal however, did address itself firstly to the issue whether the enquiry was conducted in accordance with the principles of

natural justice and the standing orders applicable. Addressing itself to the question as to whether the workmen had knowledge of the enquiry, the tribunal noted evidence on record and held that it can be presumed that the workman had knowledge about constitution of the committee. The tribunal thereafter addressed itself to the issue whether the workman was aware of the dates fixed by the Enquiry Committee and that the enquiry officer had satisfied himself about the dates fixed by him. After considering the documentary evidence, which was available on record noted the fact that notices to the Petitioner workman were sent by ordinary post, by registration and also under certificate of posting. The explanation by the workman was considered. After considering the evidence, the learned tribunal held that the workman had notice about the date of hearing and therefore, inspite of the notice the workman had chosen not to participate and the enquiry Officer was right to proceed exparte. The tribunal upheld the order of the enquiry officer in proceeding exparte. The tribunal thereafter chose to address itself to the issue whether the company had given opportunity to the workman and whether the enquiry was sham. Documentary evidence in the form of medical certificates produced by the petitioner workman were considered. The learned tribunal on the material on record held that the accident which was

claimed by the workman was not proved and after considering other evidence, the tribunal held that the enquiry conducted satisfied the test of compliance with principles of natural justice. The tribunal thereafter addressed itself to the issues and noted that as the petitioner did not appear before the enquiry officer and therefore, he could not claim that non supply document could have affected the merits of the case. Addressing itself then to the issue whether the findings were perverse, the tribunal held that the report of the enquiry officer appears to be based on oral and documentary evidence on record. The findings are such which a reasonable man can come to the conclusion on the basis of the material on record. The tribunal also addressed itself to the contention raised by the Petitioner that the punishment was not imposed by the Disciplinary authority and further that he was not made known as to who was the Appellate Aauthority and based on the material produced by the petitioner rejected the said contention. The tribunal also found that there was compliance with the provisions of the standing orders. The tribunal therefore, held that the domestic enquiry can be upheld.

6. However, considering the fact that the workman had led evidence on record, the tribunal addressed itself to the evidence on record and thereafter

concluded by holding that it is of the view that the workman could not satisfy that he had remained absent for valid reasons and held that the workman remained absent without leave from 16.8.1993 to the date of dismissal and he could not justify his absence before the tribunal. Addressing itself to the issue of punishment, it held that considering the conduct of the workman who had deliberately remained absent and had failed to submit himself to the medical examination of the Management Doctors, the punishment of dismissal was justified as the workman remained absent for about four months. The tribunal noted that the company had considered the past record and in these circumstances held that there is no scope for reduction of sentence of punishment in exercise of its powers under Section 11(A) of the Act. The tribunal noted that the judgements refererd to by the Petitioner herein were not referred to as the award is based on facts and not on question of law and accordingly answered the reference.

7. At the hearing of this petition, on behalf of the Petitioner, the petitioner appearing in person has summarised his contentions as under :

(1) That the enquiry held exparte was without giving him sufficient opportunity and consequently ought to have been set aside and in consequence his

dismissal;

(2) The order of punishment was not issued by the Disciplinary Authority;

(3) The tribunal did not permit him to examine defence witnesses which he had applied for and consequently he was denied a fair opportunity and on that count the award is liable to be set aside.

8. On behalf of the Respondents, their learned counsel has produced firstly the compilation of documents right from 17.8.1993 whereby the appellant was called upon to report for duty or submit his explanation and or to appear before the medical officer at Santacruz. It is not necessary to advert to all these documents. The notice dated 17.11.1990 has also been placed on record which was communicated on 19.11.1990 as to who ere the Disciplinary Authority under the Model Standing Orders and the appellate authority. In so far as petitioner is concerned, who was working in the Financial Accounts Department, it was Asst. Financial Controller or its equivalent. Appellate authority was set out was Deputy Finance Controller or its equivalent.

9. Considering the above, the first question is whether the tribunal was right in holding that the

enquiry officer was right in proceeding exparte. This is purely a finding of fact based on the material which was available on which he has come to the conclusion that the enquiry officer was right in proceeding exparte. The tribunal has noted that various communications for appearance at the enquiry were communicated to the petitioner. Apart from registered post also under certificate of posting and ordinary post and the same were addressed at the address of the Petitioner. In the normal course, this will be presumption that the petitioner has received all such communications. Mere fact that on occasions, the petitioner refused to accept letters has been considered by the learned tribunal and the argument advanced by the petitioner for non acceptance or refusal has been rejected. In my opinion as the finding by the tribunal is based on material on record and the Petitioner has been unable to show that the said findings are perverse, it will not be possible to interfere with the said findings of fact. Even in respect of the contention of holding enquiry in conformity with the standing orders and fair play, the learned tribunal has addressed itself to the issues relevant for the said determination. It is only after that and considering the material on record that the findings has been recorded that there has been both compliance with standing orders as also principles of natural justice and fair

play. Again the same amounts to findings based on fact. There is nothing perverse in the said findings and consequently I am of the opinion that the first contention as raised by the petitioner herein that the exparty enquiry ought not to be relied upon has to be rejected. The enquiry Officer has complied with the principles of natural justice and fair play and also standing orders.

10. We then come to the contention that the authority imposing punishment was not a Disciplinary authority. It may be mentioned that when the petitioner first joined, it was not model standing orders which were applicable but service regulations. On the model standing orders becoming applicable, the employer notified the disciplinary authority as well as the Appellate Authority under the Model standing orders. The company notified the said by notice dated 17.11.1990. In so far as petitioner is concerned, the Disciplinary Authority and Appellate Authority are set out in the notification. The punishment of dismissal in the case of Petitioner was by the Assistant Finance Controller who is Disciplinary authority within the meaning of notification dated 17.11.1990. The second contention therefore, by the petitioner herein that the Assistant finance Controller was not disciplinary authority has to be rejected.

. The further contention is that no appellate authority was notified has also to be rejected considering that the very notification provides as to who would be appellate authority.

11. We then come to the last contention that the Petitioner was not permitted to lead defence witnesses. In the earlier part of the order, we have noted that in the instant case, the principle of permitting the workman or employer to lead evidence was departed from. The tribunal ought to have first considered whether the enquiry was fair and proper and finding is not perverse and only in the event it came to the conclusion that the enquiry was vitiated or that the findings were perverse an opportunity had to be given to the petitioner and or company to lead evidence. In the instant case, that issue was not decided as preliminary issue but workman was allowed to lead evidence. On the findings of this court that the enquiry was fair and proper, and the findings were not perverse, really speaking the evidence led by the workman need not be considered. However, the tribunal itself has chosen to consider the said evidence which was led. Merely because tribunal did not permit evidence of some witnesses to be led, it cannot be held that the enquiry itself has to be set aside. In the first instance, most of the Doctors who petitioner contended have treated

him were examined. The learned tribunal disbelieved most of the evidence led on that count. Apart from that the learned tribunal has further on facts came to the finding that the petitioner herein was unable to establish that in fact he met with an accident while riding motor cycle. There was documentary evidence filed by the company to show that inspite of various letters calling upon to report for work, the petitioner chose not to report. The Petitioner was called upon to submit himself to the medical examination by the company's doctors, but the petitioner did not do so. The conclusion therefore, arrived at by the learned tribunal cannot be said to be perverse warranting interference by this court.

12. Considering what has been discussed above, I find no fault with the conclusion arrived at by the learned Tribunal. Once that be the case, I find not merit in the petition. Hence, rule discharged.

Petition dismissed. No order as to costs.

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(F.I. REBELLO,J.)